

Cemetery Commission

Minutes of the Meeting – Monday April 27, 2015

Public Meeting to discuss the Harwich Center Cemetery and First Congregational Church Memorial Garden was held at the Griffin Room in Harwich Town Hall 732 Main Street and was called to order at 8:30 a.m. Commissioner Chair Cynthia Eldredge, Commissioners Warren Nichols, Wilfred Remillard, Town Administrator Christopher Clark, Paul Sweetser Town Surveyor, Tom Daly, Cemetery Administrator Robbin Kelley and members of the public were in attendance.

Cynthia Eldredge opens the meeting with the following statement.

In an effort to clarify any misunderstanding about the recent articles about the Harwich Center Cemetery and the First Congregational Church Memorial Garden, the Cemetery Commission would like to offer the following facts.

The Harwich Center Cemetery deed (Book 1306 Page 244-245) was filed at the Barnstable County Registry of Deeds on July 22, 1965 and is a copy of a deed from March 8, 1743. This deed was for land donated by Samuel Nickerson and Benjamin Smalley. The following excerpt is from "A History of Harwich 1620-1800" by Josiah Paine:

"At the day assigned for the first meeting, the donors of the land, Samuel Nickerson and Benjamin Smalley, appeared with their deed of gift, dated March 8, 1743-4, and before Joseph Doane, Esq., acknowledged it their free "act and deed" Thus they make valid their gift of land, the outlines of which land are yet traced."

The First Meeting house was built in 1747. The first burial at Harwich Center Cemetery was Ephraim Covell on August 23, 1748.

On August 10, 1964, the First Congregation Church of Harwich (Petitioner) filed in Land Court listing themselves as owners of the Church and Parish Hall and listing the abutter Town of Harwich "Cemetery". The Decree of Land Court Registration was filed and Recorded on June 2, 1966 Plan No. 33260 at the Barnstable County Registry of Deeds and Certificate of Title 38810.

On December 12, 1988 a letter from the Harwich Cemetery Commission granted permission to the First Church of Harwich for their proposed "cremains garden with Scattering of ashes in the open, grassy southwest corner of the burying grounds, where an earlier church once stood." Within the same letter the Commission suggested "now that the site has been changed to an area over known, unmarked graves, ..." it might be useful for an attorney in the church to check Chapters 112 and 114 of the Massachusetts General Laws.

Massachusetts General Law Chapter 114 Section 3A states that "No cemetery corporation created by special charter or organization under the provisions of section one shall reuse an occupied grave except: upon the request and with the consent of a relative or descendant of the decedent occupying the grave, providing no other descendant objects." We have located 31 graves located under the memorial garden. It is illegal to have burials on top of graves without permission of their heirs.

Per Chapter 114 Section 23, said "board shall have the sole care, superintendence and management of all public burial grounds in its town,... Subject to the approval of the town, may make such regulations, consistent with law, as it deems expedient."

The Scattering of Ashes (cremated remains) does not require a transfer of property from the Town of Harwich to the First Congregational Church Memorial Garden. The Memorial Garden has been selling burial space and burying of cremated remains in the Harwich Center Cemetery; which would require a transfer of property. In order for them to sell burial lots they would have to be the owners of the property. We have found no records that they ever went before the Board of Health, the Town Administrator, The Board of Selectmen, submitted an Article at Town Meeting for transfer of land, filed for Special Legislation for the Transfer of Land at the State House or new deed at the Barnstable County Registry of Deeds with new map and parcel. The only letter they have is the one that states approval for the scattering of ashes.

In May 2010, the Cemetery Commission submitted Article 34 for Harwich Center Cemetery Gravestone Conservation for Historic Preservation.

In September of 2013, BSC group was hired by Cemetery Commission to locate every grave marker in the Cemetery and do complete survey of property lines.

Behind the memorial garden wall during mapping of stones for historic preservation Town Surveyor, Paul Sweetser and Cemetery Administrator, Robbin Kelley unearthed 3 stones belonging to longtime Harwich resident Abiel Ellis who died October 26, 1882, his spouse Thankful (Sears) Ellis who died June 18, 1891, and their son Abiel Ellis, Jr. born 1844 in Harwich and died at age 4 on September 7, 1848. His twin brother Charles Ellis died eight days later and we have not found his memorial but it is probably under the memorial garden plantings. When they designed the Memorial Garden, they built it up to create a hill like landscape. These memorials were found behind the wall. In addition, the Congregational Church had 2 slate stones that belong to Mr. Doane and Mr. Nickerson which were stored in the Church Historian's office in Broadbrooks and have been return to the town. They are in pieces and will have to be restored and reset.

On July 14, 2014 Paul Sweetser, Town Surveyor and Robbin Kelley, Cemetery Administrator with use of Ground Penetrating Radar scanned the area under the memorial garden gravel pathway and found 31 graves.

We have been able to identify many of the burials under the pathway with information that has been provided to the Cemetery Commission by the help of Massachusetts Census Record and a complete list of all the graves in the Harwich Center Cemetery compiled by a local genealogist and Harwich historian Emma Chase on April 25, 1979. This was ten years before the Memorial Garden was constructed in 1989. These burials have been verified with the use of Brooks Free Library Newspaper Archives.

On September 29, 2014 the Cemetery Commission voted to revoke the Agreement made in 1988 to the First Congregational Church, as the intent of the previous Commission was to have a scattering garden, not burial of Cremated Remains.

February 25, 2015 a new section was scanned with the GPR equipment and was found to be clear of any burials. This is where the original meeting house stood, and the original proposed location for the scattering garden.

The Cemetery Commission has been trying to work with the Memorial Garden members to come up with a compromise and has offered to pay for half of the move of the cremated remains to the new section. The Highway Department would move the benches and a portion of the patio. The Memorial Garden has 141 cremated remains currently buried. The memorial garden has sold 200 plus spaces, ranging between \$250.00 to \$600.00 per grave space.

There have been no deeds for rights of burial given to the relatives of the deceased who are buried in the Memorial Garden in the Harwich Center Cemetery. Without a deed for rights of burial there is no legal right to be buried there.

The Town of Harwich Cemetery Rules and Regulations #14 allows the town to correct any errors made in description, transfer or conveyance of any interment rights or property, either by canceling such conveyance and substituting and conveying in lieu thereof property or burial rights of equal value and similar location which may be selected by the Cemetery Commission.

The Harwich Center Cemetery is one of the oldest cemeteries in the Town of Harwich with Historic significance. Many of our founding families are buried within this cemetery. When an individual or family purchase's a lot, whether it is 200 years ago or 2 days ago, they pay into Perpetual Care. The Town has a legal responsibility to take care of the lots and protect the grave spaces against defamation of any kind. These historic graves now have gravel pathway and illegal burials right over the center of their burials. I am sure this was not what they had envisioned for their final resting place to look like. I would like to open the floor for comments and questions; also there are copies at the back of the room for anyone who would like them.

Christopher Clark said where we are now and where we are heading. I think it is important that the statement lays out the town's position is. There are two other elements that need to be taken into account. The church has engaged the services of Attorney Barbara Huggins and town has so engaged the services of Kopelman and Paige in an effort to come to some resolution. There is an issue and the town wants to create a resolution in a respectful way. Mr. Clark also stated the proposal sent to the church officials on March 5th which contained a nine or ten point plan with provisions designed to reach a resolution. The Cemetery Commission latest offer to the Memorial Garden Committee thru Attorney Huggins stating that the town would pay for the full relocation costs move of the cremains of \$24,325. Mr. Clark continued explaining the Cemetery Commission Rules and Regulations in the upcoming annual town meeting to allow cremation remains in lots to be reduced in size to accommodate the lot sizes presently in place at the memorial garden. Under the existing rules and regulations we cannot do cremated remains in the form that they have been done by the church and what the article at town meeting will allow for a revised layout we have a few maps to view here in an area that we know does not have any remains underneath. That is an important piece so that the rules and regulation allows us to do the smaller cremated remains sites in order to accommodate in a style and format that is similar I believe what was the intent of the church going back to 1988.

Thomas P Daly of Cemetery Helpful Solutions, "I'm very supportive of where they're (the town) heading, the town has acted in a very dignified and respectful manner for those who are buried there. They're the ones who have the rights; it's a very positive direction."

Robbin Kelley, Cemetery Administrator in the description of the new section that we are proposing has grave spaces that have been laid out by our Town Surveyor Paul Sweetser. Paul Sweetser showed the map which provided a layout in a portion of the cemetery where we (Robbin Kelley and Paul) found no graves. It would contain 492 cremains lots. This is in the area where the foundation of the first meetinghouse once stood.

Our current burials for cremated remains are for 2 cremains in a 3 feet x 4 feet space. Cemetery Administrator Robbin Kelley went over the Rules and Regulation changes to lot size to be 8" x 6" for grave space and memorialization for those grave spaces. The other changes to the rule and regulations will be addresses for the cemeteries so that GPS for travel to the cemeteries for funerals.

Cynthia Eldredge asked if there were any questions or comments from the floor. There were no comments or questions from the public. Wilfred Remillard made motion to adjourn the meeting it was seconded by Warren Nichols.

The meeting was adjourned at 8:50 a.m.

Respectfully Submitted,

Robbin Kelley,
Cemetery Administrator